IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

MFA.No. 1211 of 2000(A)

OA.79/1994 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANTS:

1.MRS.UMAYAL CHETTYAPPAN,W/O.LATE M.CHETTYAPPAN,
AGED 47 YEARS, NO.9, ADAYAR CLUB GATE ROAD,
MADRAS - 600 028

2.MRS.AZHAGU ANNAMALAI,W/O.ANNAMALAI,
AGED 30 YEARS, NO.5, 1ST CROSS STREET, INDIRA NAGAR,
MADRAS - 600 020

3.MRS.MAYYAMAI VENKATACHALAM,W/O.A.VENKATACHALAM,
AGED 29 YEARS, RESIDING AT 13/1, RANJITH ROAD,KOTTUPURAM
MADRAS - 600 085

4.MRS.SIVAGAMI MUTHUKAUPPAN,W/O.K.MUTHUKARAPPAN,
AGED 26 YEARS, RESIDING AT B.BLOCK, 005, REHEJA CENTRE,
NO.1073, 1074, AVINASHI ROAD, COIMBATORE - 641 018.

5.MISS.C.JAYALAKSHMI/D/O.LATE M.CHETTIYAPPAN,
AGED 22 YEARS, RESIDING AT NO.9, ADAYAR CLUB GATE ROAD,
MADRAS - 600 028

6.MINOR SON C.SENDIL MEIYAPPAN,AGED 14 YEARS,
REP. BY HIS NEXT FRIEND AND GUARDIAN HIS MOTHER,
THE 1ST APPELLANT.

7.KURIAN E.KALATHIL, AGED 48 YEARS,
S/O.EAPAN,HAVING HIS OFFICE AT T.C.27/373-7 G.H.ROAD,
TRIVANDRUM AND AT PRESENT HAVING HIS OFFICE AT
T.C.15/1004 OPP.TRIDA (TRIVANDRUM DEVELOPMENT AUTHORITY)
VAZHATHAKKADU, TRIVANDRUM.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS:

1.THE STATE OF KERALA, REP. BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2.THE CUSTODIAN OF VESTED FORESTS, CUSTODIAN'S OFFICE, OLAVAKKODE, PALAKKAD.

ADDL.RESPONDENTS 3, 4 AND 5:

3.CATHERINE THOMAS,W/O.LATE K.T.THOMAS, BRIGHT HOUSE, KOZHIKODE - 673017.

4.JAY THOMAS,S/O.LATE K.T.THOMAS,1-C, AMBER PARK, C.S.ROAD, KOCHI-11.

5.DR.JOE THOMAS,BRIGHT HOUSE, KOZHIKODE - 673017.

ADDL RESPONDENTS 3, 4 AND 5 ARE IMPLEADED AS PER ORDER DATED 30.10.2007 IN I.A.NO.2291 OF 2007

BY ADV. SPL. G.P.FOR FOREST ADV.SRI.M.P.PRAKASH
SRI.BECHU KURIAN THOMAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1211 OF 2000 (A)

Dated this the 30th day of October, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed against the order of the Forest Tribunal in O.A.No.79/1994. The disputed portion is 106.54 hectares of land. The tribunal mainly dismissed the application holding that the application was time barred as considerable time was elapsed after Exts.B1, B12 and B13 notifications were issued. Earlier the matter was remanded when order of the tribunal was challenged by the predecessor - in - interest of the appellant by judgment of this Court dated 10.9.1997. Earlier there was no findings that the application was time barred. But application was dismissed on the ground that prayer in the application was beyond the jurisdiction of the tribunal. Therefore it was dismissed and hence an appeal was filed. Appeal was considered and in the light of the Full Bench decision of this Court in ***Bhargavi Amma v. State of Kerala (1997 (2) KLT 513 (F.B.))*** wherein it is stated that the entire

matters regarding the vesting of the forests can be decided by the forest tribunal and once the Government claimed that it is a private forest it can only be decided by the forest tribunal and the matter was remanded back to consider it on merits.

2. Major contention raised by the appellants is that in view of the above findings, question of time bar now cannot be raised. It is also submitted that major part of the area are cultivated with rubber trees, tea, coffee and cardamom and only a very small portion was not planted and that is necessary as ancillary to the plantation. It was also contended that excess of a tea factory are evident and evidence was not exclusively considered as tribunal came to the conclusion that application was time barred. According to the appellant, since this question was not argued, they may be given an opportunity to argue this part before the tribunal and adduce evidence to show that application is not time barred. According to the appellant, land in question is not a private forest as defined in the Act and even if it is a private forest, it is not vested in the Government under Sections 3(1) of the Act and

they are entitled to exemption under Sections 3(2) and 3(3) of the Act. The Special Govt.Pleader would plead that since Exts.B1, B12 and B13 notifications were published in news papers in accordance with law if anybody was aggrieved, he ought have filed application within six months of the publication of the notification. It is further contented that in the original application scheduled property was claimed as reserve area necessary for the plantation and so much area cannot be granted as reserve area and at that time they had no case that major portion of the land in question was planted. An impleading petition was filed to implead respondents 3, 4 and 5 as additional respondents stating that they are the real owners of the property. The notification stated to have been published are illegal and cannot be relied on. If the property is not a private forest it shall be given to them. They also contended that they being the real owners, they shall be allowed to contend that there was no proper notification. They came to know that Government claimed the land as private forest vested in the Government only very late. According to the counsel for the appellant, the suit filed by

additional respondents claiming title and possession of the property in question was already dismissed and R.F.A. is pending before this Court. According to additional respondents, the property in the suit relates to another property and not this property. In any event, their case also ought to have considered by the tribunal. The earlier order of remand was not a restricted one. Order of the tribunal was set aside and held that tribunal has frunction to decide all questions raised in the application. Therefore tribunal has got power and jurisdiction to consider the question of time bar and all contentions raised by the parties. We are of the opinion that in view of the circumstances of the case the question of time bar and question of merits and question who is the owner etc. are to be reconsidered by the tribunal. Impleaded respondents were not heard. We are not expressing any opinion as to the rights of impleaded respondents or the merits of the matter. Hence in the circumstances of the case, we remand the matter for fresh consideration without expressing any opinion on the merits of the matter and additional respondents can also file statement before the tribunal and

appropriate defence can also be made by the appellants and that also should be considered by the tribunal apart from the question of time bar and other matters. Parties are allowed to adduce additional evidence before the tribunal according to law. Accordingly this appeal is remanded. Parties may appear before the tribunal on 18.12.2007.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1211 OF 2000 ()

J U D G M E N T

30th October, 2007